

### **Remarks**

Claims 1, 3-7 and 10-18 are pending in the application and stand rejected. By this paper, the specification is amended, claims 1 and 3 are amended, and claims 21-22 are added. Based on the amendments and arguments below, reconsideration of claims 1, 3-7, 10-18 and 21-22 is respectfully requested.

The amendments do not present new matter. Support for the amendments to claims 1 and 3 are found in paragraph [0024] ("identify multiple versions of an application, how to convert settings across application versions...takes the described data and migrates an application along with its settings and data files to another computer"), paragraph [0076] ("scans the drive(s) for the environment settings and files to be migrated"), paragraph [0088] ("maintain all user preferences and settings"), and paragraph [0089] (Personality Package includes "desired preferences, settings"). These references to the present specification are by way of example only, and not limitation.

Support for new claims 21-22 is found in FIG. 3 and paragraph [0089]. Further, the subject matter of new claims 21-22 is subject matter removed from claim 3 in a previous amendment.

### **Amendments to the Specification**

Per the Examiner's request on page 9 of the present Office Action, Applicants have amended the specification to explicitly incorporate by reference U.S. Provisional Application No. 60/177,585.

**Rejections Under 35 U.S.C. § 102(b) based on Nico Mak**

Claims 1, 4-7, and 10-18 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Nico Mak, Winzip Version 7.0 ("Nico Mak"). Applicants respectfully traverse this rejection because Nico Mak fails to identically teach every element of claim 1, as amended and presented herein. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

According to page 9 of the Office Action, "Nico Mak discloses a system for extracting application information, included with an application WinZip registered in a Microsoft Window." However, Applicants respectfully submit that claim 1, as amended and presented herein, includes subject matter that goes far beyond merely creating compressed files that a user can send "to the other users who want to share the files," as suggested on page 10 of the Office Action.

As opposed to the teachings of Nico Mak, an aspect of claim 1 is that a user can automatically migrate files and settings associated with a first version of an application program on a first computer to a second version of an application program on a second computer. Thus, the user can maintain preferences and settings when switching computers and application versions. However, Nico Mak is silent as to the subject matter of claim 1.

In particular, Nico Mak does not teach or suggest:

- (C) a ***first version of an application program*** resident on said long term storage device of said processing unit of said first computer system;

- (D) a **second version of said application program** resident on said long term storage device of said processing unit of said second computer system; and
- (E) means for **migrating files and settings associated with said application program** from said first computer to said second computer, wherein said means for migrating further comprises:
  - (1) an application interface file **identifying how to convert said settings from said first version to said second version** of said application program;
  - (2) ...
  - (3) ...said console configured to **scan said first computer for said files and settings to be migrated** to said second computer; and
  - (4) ...said self-extracting auto-migration package configured to **update said second version of said application program with said files and settings of said first version.**

(Emphasis added).

Thus, Applicants respectfully request that the rejection of claim 1 based on Nico Mak be withdrawn.

#### **Rejections Under 35 U.S.C. § 102(a) based on Network Associates**

Claims 1, 3-7, and 10-18 stand rejected under 35 U.S.C. § 102(a) as being allegedly anticipated by Network Associates, Inc., "Total Virus Defense Suite – Best Practices Guide – Migration Technical Manual," Version 4.x family products, pages: i-x, 1-248, 5-1999 ("Network Associates"). However, Applicants respectfully traverse this rejection because the Examiner has not established Network Associates as prior art under 35 U.S.C. § 102(a), and because Network Associates fails to identically teach every element of claims 1 and 3, as amended and presented herein.

As an initial matter, the Examiner has not established that Network Associates is prior art under 35 U.S.C. § 102(a) because there is no indication of when Network Associates became publicly available. See, *Carella v. Starlight Archery*, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986) (stating that the "statutory language 'known or

used by others in this country' (35 U.S.C. § 102(a)), means knowledge or use which is accessible to the public"). The knowledge or use is accessible to the public if there has been no deliberate attempt to keep it secret. See, *W.L. Gore & Assoc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). See also, M.P.E.P. § 2132.

The footnote on page ii states "Issued May 1999." However, pages ii-iv are a "Mutual Non Disclosure Agreement" that suggests that at least as of May 1999 the document was distributed only upon an obligation to keep it secret. This duty of secrecy is confirmed on page 1 of the document which states "[t]his information is for your benefit alone and may not be disclosed to any other sources outside of your direct organization."

Thus, Applicants request that the Examiner provide evidence of the date that the Network Associates document became publicly available, or withdraw all rejections based on the document.

Even if Network Associates were prior art under 35 U.S.C. § 102(a), which it has not been established to be, it still would not anticipate claims 1 and 3 as amended herein because it does not teach all of the claim limitations.

According to page 2 (under the "Caveats" heading) of Network Associates, the main focus of the document "is the migration from existing Anti-Virus Toolkit and VirusScan 3.x to TVD Suite Version 4." However, Network Associates does not teach or suggest updating a second version of an application program on a second machine with files and settings associated with a first version of the application program on a first machine, as required by claim 1. See discussion above.

Rather, Network Associates teaches completely removing existing software and replacing it with new software. See, page 29 under the heading "Things to consider when upgrading to VirusScan 4.x now" (indicating that "[p]rocesses and documentation must be created to remove existing anti-virus software, and to install and configure the new product."). Further, Network Associates is silent as to transferring such files and settings between a user's computers, as required by amended claim 1.

Regarding claim 3, Network Associates does not teach or suggest each limitation of claim 3, which includes, among other things:

- (A) loading a ***Personality Package corresponding to a user***, said Personality Package comprising ***user settings, user preferences***, application programs and data files for migration ***from a source computer to a destination computer***, said Personality Package corresponding to specified application versions;
- ...
- (G) getting application version specifics, and testing to determine if ***destination application versions in said destination computer match said application versions specified in said Personality Package***, and generating an error if said destination application versions do not match....

(Emphasis added).

Network Associates is silent as to a Personality Package corresponding to a particular user that comprises the user's settings and preferences. Further, as discussed above, Network Associates is silent as to migrating such settings and preferences from a source computer to a destination computer.

For at least the foregoing reasons, Applicants respectfully request that the rejection of claims 1 and 3 based on Network Associates be withdrawn.

### **Conclusion**

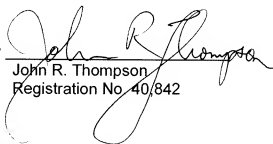
Based on the amendments to the claim and the arguments presented above, Applicants respectfully submit that independent claims 1 and 3 are patentable over the cited references. Further, dependent claims 4-7, 10-18 and 21-22 represent patentable subject matter, among other reasons, by their dependency on claims 1 and 3, respectively. Thus, Applicants respectfully request that all pending claims be allowed.

The Examiner is invited to call Applicants' representative at the number provided below if any issue remains that may be resolved by telephone. A Notice of Allowance is respectfully requested.

Respectfully submitted,

**Altiris, Inc.**

By



John R. Thompson  
Registration No. 40,842

STOEL RIVES LLP  
One Utah Center Suite 1100  
201 S Main Street  
Salt Lake City, UT 84111-4904  
Telephone: (801) 578-6994  
Facsimile: (801) 578-6999